

Gurung (Migration) [2020] AATA 5380 (26 October 2020)

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANT:	Mr Sonam Chhiring Gurung
CASE NUMBER:	1724273
HOME AFFAIRS REFERENCE(S):	BCC2015/2653607
MEMBER:	Peter Smith
DATE:	26 October 2020
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal remits the application for a Partner (Temporary) (Class UK) visa, with the direction that the applicant meets the following criteria for a Subclass 820 (Partner) visa: • cl.820.211(d)(ii) of Schedule 2 to the Regulations; • cl.820.211 of Schedule 2 to the Regulations; and • cl.820.221 of Schedule 2 to the Regulations. •

Statement made on 26 October 2020 at 12:57pm

CATCHWORDS

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner) – no substantive visa at time of application – compelling reasons to waive Schedule 3 criteria – genuine and continuing spouse relationship – joint property ownership and financial commitments – shared responsibility for housework – joint social activities and travel – living together for a substantial time – sponsor’s substantially dependence on the applicant for emotional support – decision under review remitted

LEGISLATION

Migration Act 1958, ss 5, 65

Migration Regulations 1994, Schedule 2, cls 820.211, 820.221; Schedule 3; r 1.15

CASES

Babicci v MIMIA (2005) 141 FCR 285

He v MIBP [2017] FCAFC 206

MZYPZ v MIAC [2012] FCA 478

Waensila v MIBP [2016] FCAFC 32

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Border Protection (the Minister) to refuse to grant the applicant a Partner (Temporary) (Class UK) visa under s.65 of the *Migration Act 1958* (Cth) (the Act).
2. Mr Sonam Chhiring Gurung (the applicant), a citizen of Nepal, made a valid application to the Minister for the grant of a Partner (Temporary) (Class UK) visa in which he claims to be the spouse of Ms Jasu Gurung (the sponsor).
3. At the time of application, item 1214C of Schedule 1 to the Migration Regulations 1994 (the Regulations) provided for the grant of a Partner (Temporary) (Class UK) visa. At the time of application, the Class UK visa class contained only one subclass: Subclass 820 (Partner): item 1214C(4). At the time of application, Part 820 of Schedule 2 to the Regulations set out the criteria for the grant of a Partner (Temporary) (Class UK) visa.
4. The delegate refused to grant the applicant a Partner (Temporary) (Class UK) visa on the basis that the applicant did not satisfy cl.820.211(d)(ii) of Schedule 2 to the Regulations because at the time of application the applicant did not hold a substantive visa. The delegate determined that the applicant did not satisfy Schedule 3 criteria 3001, 3003 or 3004. The delegate determined that none of the applicant's circumstances constituted compelling reasons.
5. An application to review the delegate's decision was made to the Tribunal on 6 October 2017. Attached to his application is a copy of the delegate's Decision Record dated 6 October 2017.
6. The applicant appeared before the Tribunal on 2 October 2020 to give evidence and present arguments. The applicant's sponsor attended the hearing and gave evidence in support of the application.
7. The applicant was represented in relation to the review by his authorized representative and authorized recipient, a registered migration agent. The representative attended the Tribunal hearing.
8. At the commencement of the hearing, the applicant informed the Tribunal that he and the sponsor did not require the assistance of the interpreter who was also in attendance at the hearing. At the request of the applicant and after being satisfied that the applicant and his sponsor appeared to be sufficiently proficient in English, the Tribunal decided to excuse the interpreter from further attendance.
9. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

BACKGROUND

10. The applicant first arrived and entered Australia on 14 December 2008 as the holder of a Student Vocational education and training (Subclass 572) visa. This visa allowed the applicant to remain living and studying in Australia until it expired on 15 April 2011.

11. When the applicant first arrived and entered Australia, he was in a spouse relationship with another person.
12. On 31 January 2014 the applicant made an application for the grant of a Partner (Temporary) (Class UK) visa in which he claimed to be the spouse of his sponsor. relationship with his sponsor. However, this application was withdrawn by the applicant on 17 August 2015.
13. A further Partner (Temporary) (Class UK) visa application was made by the applicant on 11 September 2015 which is the subject of the present review.
14. On 31 January 2014 the applicant was granted a Bridging C (Subclass 030) visa.
15. The applicant remains the holder of a Bridging C (Subclass 030) visa pending determination of his present application.

CONSIDERATION OF CLAIMS AND EVIDENCE

16. In the present case, the question for the Tribunal to determine is whether the applicant was at the time of application the holder of a substantive visa. If the applicant was not, he must satisfy Schedule 3 criterion 3001, 3003 and 3004 unless there are compelling reasons for not applying those criteria.
- 17.
18. In conducting this review, the Tribunal has had regard to the evidence and information held by the Department of Immigration and Border Protection (the Department) and the evidence and information held by the Tribunal on its own file. The Tribunal notes that the applicant has provided the Tribunal with a considerable amount of new evidence or information that was not provided to the Department has been provided to the Tribunal.
- 19.

Does the applicant meet Schedule 3 criteria, or should those criteria be waived?

- 20.
21. An applicant who is not the holder of a substantive visa at the time of application must meet certain criteria in Schedule 3 to the Regulations. With limited exceptions not relevant to this case, he or she must satisfy Schedule 3 criteria 3001, 3003, and 3004 unless the Minister is satisfied that there are compelling reasons for not applying those criteria: cl.820.211(2)(d).
22. It is not in dispute that the applicant in the present case did not have a substantive visa at the time of application. As the applicant did not enter Australia as the holder of a Subclass 995 visa or special purpose visa, the issue in the present case is whether the applicant satisfies the Schedule 3 criteria unless there are compelling reasons for not applying those criteria. These relevant Schedule 3 criteria is set out in the Attachment to this decision.

Criterion 3001

23. Clause 820.211(d)(ii) of Schedule 2 to the Regulations provides that if an applicant who is not the holder of a substantive visa at the time of application, he or she must satisfy Schedule 3 criteria 3001, 3003 and 3004 to the Regulations. With limited exceptions not relevant to the present case, the applicant must satisfy criterion 3001, 3003 and 3004 of Schedule 3 to the Regulations, unless the Minister is satisfied that there are compelling reasons for or not applying those criteria.

24. It is not in dispute that the applicant in the present case did not hold substantive visa at the time of application. As there is no evidence that the applicant entered Australia as a Subclass 995 visa holder or special purpose visa, the issue in the present case is whether the applicant satisfies Schedule 3 criteria unless there are compelling reasons for not applying those criteria.
25. To satisfy criteria 3001 of Schedule 3 to the Regulations, the application must have been made within 28 days of the relevant day. The expression relevant day is defined in criterion 3001(2) and is set out in the Attachment to this decision.

Criterion 3003

26. Criterion 3003 of Schedule 3 to the Regulations will only apply in a limited number of cases where the applicant has not been the holder of a substantive visa on or after 1 September 1994, and on 31 August 1994 was either an illegal entrant or the holder of any entry permit that was not valid beyond that date. There is no evidence before the Tribunal that the applicant is a person that would be captured by criteria 3003. As there is no evidence that the applicant's circumstances are captured by criteria 3003, the Tribunal finds that it does not apply in the present case.

Criterion 3004

27. Criterion 3004 of Schedule 3 to the Regulations requires that the Minister be satisfied that the applicant is not the holder of a substantive visa because of factors beyond his or her control, that there are compelling reasons for granting the visa, and that the applicant has complied substantially with the conditions applicable to the last of any substantive visas and any subsequent bridging visa held by the applicant. In addition, the Minister must be satisfied that the applicant would have been able to be granted the visa if the applicant had applied on the day he or she last held a substantive or criminal justice visa; or would have satisfied the criteria when he or she last entered Australia unlawfully; that the applicant intends to comply with any conditions of the visa; and the last visa or entry permit held (if any) was not subject to a condition that the holder would not, after entering Australia, be entitled to be granted an entry permit, or further entry permit, while the holder remained in Australia.
28. The applicant initially made an application for the grant of a Partner (Temporary) (Class UK) visa on 31 January 2014. However, the applicant says that he withdrew that application on the advice he received from his former representative. The applicant was granted a Bridging Visa C (Class WC) (Subclass 030) visa on 31 January 2014. The subsequent application which is the subject of the present review was made on 11 September 2015. The last substantive visa held by the applicant was the Student Vocational education and training (Subclass 572) visa. The last day the applicant held a substantive visa was 15 April 2011 when it expired. On the evidence, the Tribunal finds that the application for a Partner (Temporary) (Class UK) visa was not made within 28 days of the last day when the applicant held a substantive visa. For the purpose of the present application the relevant day is the last day the applicant held a substantive visa. On this evidence, the Tribunal finds that the applicant remained in Australia as an

unlawful non-citizen for over four and half years before taking steps to regularize their status.

29. As the application was not made within 28 days of the relevant day, the Tribunal finds that the applicant does not satisfy criterion 3001. As the applicant does not satisfy criterion 3001, the Tribunal is not required to consider whether the applicant satisfies criterion 3003 and 3004.

30. Compelling reasons

31. As the Tribunal has found that the applicant does not meet the relevant Schedule 3 criteria, it is required to consider whether there are compelling reasons for not applying the criteria. The expression 'compelling reasons' is not defined for these purposes. However, the reasons should be sufficiently convincing to move the decision-maker to exercise its discretion to waive the requisite criteria and the circumstances must be sufficiently powerful to lead a decision-maker to make a positive finding in favour of waiving the required criteria: *MZYPZ v MIAC* [2012] FCA 478 at [10]; *Babici v MIMIA* (2005) 141 FCR 285 at [24].
32. Circumstances which constitute 'compelling reasons' for not applying the Schedule 3 criteria can arise at any time, including after the visa application is made: *Waensila v MIBP* [2016] FCAFC 32.
33. The applicant has submitted to the Tribunal that he and his sponsor are in a genuine and continuing spouse relationship. He says that being in a genuine and continuing relationship is a compelling reason for not applying the Schedule 3 criteria. At the hearing the Tribunal informed the applicant that in considering whether a genuine relationship is a compelling reason for not applying the Schedule 3 criteria, it would consider whether his relationship was genuine and continuing by reference to the requirements under s.5F(2) of the Act and the factors under reg.1.15A of the Regulations.

Whether the parties are in a spouse or de facto relationship

34. Clauses 820.211(2)(a) and 820.221 require that at the time of application, and at the time of this decision, the applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen.
35. In the present case, the applicant claims to be the spouse of the sponsor who claims to be an Australian citizen. The applicant provided the Department with a sealed copy of the sponsor's Certificate of Australian Citizenship. The Certificate relevantly provides that the sponsor was acquired Australian citizenship on 23 April 2015. On this evidence, the Tribunal is satisfied that the sponsor was at the time of application and at the time of this decision an Australian citizen.
36. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision. Each of the specific matters contained in r.1.15A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206.

Are the parties validly married?

37. If the parties are validly married, they may meet the requirements of a married relationship, but not a de facto relationship.
38. The applicant claims to have been married previously to another person other than his sponsor. The applicant claims that he and his former wife were married to each other on 27 November 2007 and on 5 January 2013 his former marriage ended in divorce. The applicant provided the Department with a sealed copy of a Divorce Order made by a deputy registrar of the then Federal Magistrates Court of Australia (the Court) in respect of his former marriage. The Divorce Order relevantly provides that the marriage between the applicant and his former wife was solemnized on 27 November 2007 and on 4 December 2012 an order to terminate the marriage was made by the Court with such order to take effect on 5 January 2013.
39. The applicant claims that he and his sponsor were married to each other in New South Wales on 18 September 2013. The applicant provided the Department with a certified copy of his Marriage Certificate issued by the Registrar of NSW Births, Deaths and Marriages. The Marriage Certificate relevantly provides that the applicant and his sponsor's marriage was solemnized on 18 September 2013. On this evidence, the Tribunal is satisfied that the applicant and his sponsor were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

Are the other requirements for a spouse relationship met?

40. The financial aspects of the relationship

41. The Tribunal has considered the financial aspects of the applicant's relationship with his sponsor, including whether the applicant and his sponsor have any joint ownership of real estate or other major assets and joint liabilities, and whether the applicant and his sponsor pool their financial resources, especially in relation to major financial commitments, whether one party to the relationship owes any legal obligation in respect of the other and the basis of any sharing of day-to-day household expenses.
42. The applicant has provided the Tribunal with copies of documents which show the applicant and his sponsor have purchased land and constructed a property at Leppington. The applicant has also provided the Tribunal with copies of CBA mortgage documents. The mortgage documents show that the applicant and his sponsor were approved for a home loan on 22 March 2018. Bank statements provided by the applicant show that the CBA has released all of the monies to the applicant and his sponsor to fund with the purchase of the Leppington home. Having regard to all of this evidence, the Tribunal is satisfied that the applicant and his sponsor have joint ownership of real estate.
43. At the hearing the applicant and his sponsor were asked if they jointly owned other major assets. As there was no documentary evidence or information about joint ownership of other major assets, the applicant and his sponsor were each asked to describe what other major assets they owned jointly. The applicant and his sponsor gave consistent evidence that they jointly owned a motor vehicle. The applicant and his sponsor were able to describe the make, model and year and the colour of the vehicle. On the evidence given by the applicant and his sponsor at the hearing, the Tribunal is satisfied that the applicant and his sponsor jointly own other major assets such as a motor vehicle.
44. The Tribunal has considered the mortgage documents the applicant provided to the Tribunal and the joint bank statements. The mortgage documents show that the applicant and his sponsor have a mortgage with CBA in respect of money they borrowed to assist with the

purchase of their house. In respect of the bank statements they show that the applicant and her sponsor share in monthly mortgage repayments. However, in their oral evidence, the applicant and his sponsor told the Tribunal that by mutual agreement with the CBA, the applicant and his sponsor have not made any repayments on their home loan over the last six months because of the global pandemic. On the evidence, notwithstanding the freeze agreed between the applicant and his sponsor with the CBA in respect of their mortgage repayments, the Tribunal is satisfied that the applicant and his sponsor have joint financial liabilities.

45. The Tribunal has considered whether the applicant and his sponsor pool their financial resources, especially in relation to major financial commitments. The Tribunal observes that the payment of the applicant and the sponsor's wages and ATO tax refunds are paid directly into the joint bank account. The Tribunal observes that the applicant's substantial redundancy payment from his former employer was also paid directly into the joint account. The Tribunal observes that the applicant and his sponsor use the monies from that account to pay for ongoing financial commitments such their insurance and car registration. On this evidence, the Tribunal is satisfied that the applicant and his sponsor pool their financial resources, especially in relation to major financial commitments.
46. There is no evidence that one party to the relationship owes any legal obligation in respect of the other.
47. The Tribunal has considered the basis of any sharing of day-to-day household expenses between the applicant and his sponsor. The bank statements provided by the applicant show that the payment of wages from the applicant and sponsor's respective employers. The statements show that the applicant and his sponsor use their income to pay for day-to-day household expenses including the payment of electricity bills, internet bill and phone bills and the purchase of groceries and other household items. On this evidence, the Tribunal is satisfied that the applicant and his sponsor share in day-to-day household expenses.

48. The nature of the household

49. The Tribunal has considered the nature of the applicant's household, including whether the applicant and his sponsor have any joint responsibility for the care and support of children, their living arrangements and any sharing of the responsibility for housework.
50. There is no evidence that the applicant and his sponsor have joint responsibility for the care and support of children.
51. The applicant and his sponsor were asked a number of questions about their living arrangements. The applicant and his sponsor gave consistent evidence as to when they began living with each other, the number of households they have shared and the length of time they shared each household.
52. To assist the Tribunal determine whether the living arrangements of the applicant and his sponsor were consistent with that of a genuine spouse couple, it asked the applicant and his sponsor to each draw a diagram of their bedroom including the items of furnishings and to identify on the diagram which side of the bed they each slept on. After he completed his diagram, the applicant was asked to provide it to the Tribunal. The applicant's diagram was not shown to the sponsor. When the sponsor was asked to enter the hearing room, she was asked to draw a diagram of her bedroom including the items of furnishings and to identify on the diagram which side of the bed both she and the applicant slept on. The Tribunal reviewed the diagram drawn by the sponsor and compared it to the diagram the applicant had drawn. The Tribunal was satisfied that both diagrams were identical.

53. The Tribunal has considered the evidence given by the applicant and his sponsor as to their living arrangements. Based on their evidence, the Tribunal is satisfied that the applicant and his sponsor live together and that their living arrangements are commensurate with that of a genuine and continuing spouse couple.
54. In respect of any sharing of the responsibility for housework, the Tribunal notes that the applicant and his sponsor gave consistent evidence about how they share the responsibility for housework including who is responsible for the cooking and preparation of meals, cleaning and washing dishes and clothes and the grocery shopping. On the evidence given by the applicant and his sponsor, the Tribunal is satisfied that the sharing arrangements in respect of the responsibility for housework is commensurate with that of a genuine spouse couple.

55. The social aspects of the relationship

56. The Tribunal has considered the social aspects of the relationship between the applicant and his sponsor, including whether the applicant and his sponsor represent themselves to other people as being married to each other, the opinion of their friends and acquaintances about the nature of the relationship and any basis on which they applicant and his sponsor plan and undertake joint social activities.
57. The applicant has provided evidence and information to the Tribunal in respect of whether the applicant and his sponsor represent themselves to other people as being married to each other. The material shows that the applicant and his sponsor represent themselves to members of their families and friends and more widely to members of the Nepalese community group which the applicant and his sponsor regularly attend. On this evidence, the Tribunal is satisfied that the applicant and his sponsor represent themselves to other people as being married to each other.
58. The Tribunal has considered the material the applicant has provided from his friends and acquaintances about the nature of his relationship with his sponsor. The applicant's friends and acquaintances refer to how they know the applicant and his sponsor and to the social aspects of the relationship and based on their observations the applicant and his sponsor appear to be in a genuine and continuing spouse relationship.
59. The Tribunal has considered the evidence and information provided by the applicant in respect of whether the applicant and his sponsor plan and undertake joint social activities. The Tribunal accepts based on the travel documents provided by the applicant that the applicant and his sponsor have on a number of occasions planned and undertaken interstate travel. The Tribunal has considered the photographs the applicant provided after the hearing. The photographs show the applicant and his sponsor socializing together with friends and family both in public and at their home and at the homes of other people. The photographs show that the applicant and his sponsor have attended significant social events such as birthdays and weddings and family and culturally related events for friends and family. On this evidence, the Tribunal is satisfied that the applicant and his sponsor plan and undertake joint social activities that are commensurate with that of a genuine and continuing spouse relationship.

60. The nature of the commitment to each other

61. The Tribunal has considered the nature of the commitment the applicant and his sponsor have to one another, including the duration of the relationship, the length of time during which the applicant and his sponsor have lived together, the degree of companionship and emotional support that the applicant and his sponsor draw from each other, and whether they see their relationship with each other as a long-term one.

62. The applicant and his sponsor were asked to give evidence about the development of their relationship including when they commenced a relationship with each other. The applicant and his sponsor made consistent claims in their evidence about being in a de facto relationship together before they decided on 14 July 2012 to commit to a shared life together to the exclusion of all others their relationship developed from a de facto relationship to a spouse relationship. Based on the consistent evidence given by the applicant and his sponsor, the Tribunal accepts that the applicant and his sponsor decided to commit to a shared life together to the exclusion of all others on 14 July 2012 and based on the Marriage Certificate provided by the applicant, the Tribunal accepts that the applicant and his sponsor were married to each other on 18 September 2013, and that their marriage is valid for the purposes of the Act as required by s.5F(2)(a). The Tribunal finds on the evidence that the duration of the relationship between the applicant and his sponsor to be substantial.
63. The Tribunal has considered the consistent claims made by the applicant and his sponsor as to the length of time during which the applicant and his sponsor have lived together. The Tribunal accepts on the evidence that the applicant and his sponsor began living with each other on 14 July 2012. The Tribunal finds on the evidence that the length of time during which the applicant and his sponsor have lived together to be substantial.
64. The applicant and his sponsor were asked about the degree of companionship and emotional support they each draw from one another. The Tribunal notes that the applicant and his sponsor gave consistent evidence about how they spend time together and how they provide each other with emotional support. The Tribunal acknowledges however that the degree of emotional support the sponsor draws and receives from the applicant is far greater than the emotional support the applicant draws and receives from his sponsor. The Tribunal accepts however that this is because of the challenges the sponsor faces with mental health.
65. On the question of whether the applicant and his sponsor see their relationship with each other as a long-term one, the Tribunal is satisfied having regard to the totality of the evidence and the substantial length of time in which the applicant and his sponsor have been in a mutually committed relationship that the applicant and his sponsor see their relationship to each other as a long-term one.

66. The sponsor's mental health and support from her sister

67. The applicant has submitted that his sponsor suffers from poor mental health. He says that this is a compelling reason for not applying the Schedule 3 criteria. He argues that if he were to return to Nepal to make his partner visa application, his sponsor's condition would deteriorate because she would not have the support that she has had from the applicant for a substantial period of time. He says that although his sponsor's sister lives in Australia, she is not able to provide the sponsor with support because she herself has her own mental health issues to manage.
68. The applicant has provided the Tribunal with medical reports from the sponsor's treating medical practitioner and her clinical psychologist. The sponsor has been diagnosed as suffering from an adjustment disorder with extremely severe levels of anxiety and depression.
69. Having considered the totality of the applicant's circumstances, the Tribunal has for the following reasons determined that the applicant's circumstances are compelling for not applying the Schedule 3 criteria.
70. The applicant and his sponsor have been in a relationship with each other for a substantially long period of time.

71. The sponsor's mental health while manageable by treatment she has become substantially dependent on the applicant over an extended period of time for his support.
72. The medical opinions provided to the Tribunal are from specialist professionals who have treated the sponsor's conditions over an extended period of time.

73. **CONCLUSION**

74. In respect of whether the applicant's circumstances constitute compelling reasons, the Tribunal for the reasons it gives above is satisfied that there are compelling reasons for not applying the Schedule 3 criteria. Accordingly, the applicant meets cl.820.211(2)(d)(ii).
75. On the basis of the above the Tribunal is satisfied that the requirements of s.5F(2) are met at the time of application and at the time of this decision.
76. Therefore, the applicant meets cl.820.211(2)(a) and cl.820.221 of Schedule 2 to the Regulations.
77. Given the findings above, the appropriate course is to remit the application for the visa to the Minister to consider the remaining criteria for a Subclass 820 visa.

DECISION

78. The Tribunal remits the application for a Partner (Temporary) (Class UK) visa, with the direction that the applicant meets the following criteria for a Subclass 820 (Partner) visa:
- cl.820.211(d)(ii) of Schedule 2 to the Regulations;
 - cl.820.211 of Schedule 2 to the Regulations; and
 - cl.820.221 of Schedule 2 to the Regulations.

Peter Smith
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).

Schedule 3

3001

- (1) The application is validly made within 28 days after the relevant day (within the meaning of subclause (2)).
- (2) For the purposes of subclause (1) and of clause 3002, the relevant day, in relation to an applicant, is:
 - (a) if the applicant held an entry permit that was valid up to and including 31 August 1994 but has not subsequently been the holder of a substantive visa — 1 September 1994; or
 - (b) if the applicant became an illegal entrant before 1 September 1994 (whether or not clause 6002 in Schedule 6 of the Migration (1993) Regulations applied or section 195 of the Act applies) and has not, at any time on or after 1 September 1994, been the holder of a substantive visa — the day when the applicant last became an illegal entrant; or
 - (c) if the applicant:
 - (i) ceased to hold a substantive or criminal justice visa on or after 1 September 1994; or
 - (ii) entered Australia unlawfully on or after 1 September 1994;whichever is the later of:
 - (iii) the last day when the applicant held a substantive or criminal justice visa; or
 - (iv) the day when the applicant last entered Australia unlawfully; or
 - (d) if the last substantive visa held by the applicant was cancelled, and the Tribunal has made a decision to set aside and substitute the cancellation decision or the Minister's decision not to revoke the cancellation — the later of:
 - (i) the day when that last substantive visa ceased to be in effect; and
 - (ii) the day when the applicant is taken, under sections 368C, 368D and 379C of the Act, to have been notified of the Tribunal's decision.

3003

If:

- (a) the applicant has not, on or after 1 September 1994, been the holder of a substantive visa; and
- (b) on 31 August 1994, the applicant was either:
 - (i) an illegal entrant; or
 - (ii) the holder of an entry permit that was not valid beyond 31 August 1994;

the Minister is satisfied that:

- (c) the applicant last became an illegal entrant, or, in the case of a person referred to in subparagraph (b)(ii), last became a person in Australia without a substantive visa, because of factors beyond the applicant's control; and
- (d) there are compelling reasons for granting the visa; and
- (e) the applicant has complied substantially with the conditions that apply or applied to:
 - (i) the last of any entry permits held by the applicant (other than a condition of which the applicant was in breach solely because of the expiry of the entry permit); and
 - (ii) any subsequent bridging visa; and
- (f) the applicant would have been entitled to be granted an entry permit equivalent to a visa of the class applied for if the applicant had applied for the entry permit immediately before last becoming an illegal entrant or, in the case of a person referred to in subparagraph (b)(ii), if the applicant had applied for the entry permit on 31 August 1994; and
- (g) the applicant intends to comply with any conditions subject to which the visa is granted; and
- (h) the last entry permit (if any) held by the applicant was not granted subject to a condition that the holder would not, after entering Australia, be entitled to be granted an entry permit, or a further entry permit, while the holder remained in Australia.

3004

If the applicant:

- (a) ceased to hold a substantive or criminal justice visa on or after 1 September 1994; or

- (b) entered Australia unlawfully on or after 1 September 1994 and has not subsequently been granted a substantive visa;

the Minister is satisfied that:

- (c) the applicant is not the holder of a substantive visa because of factors beyond the applicant's control; and
- (d) there are compelling reasons for granting the visa; and
- (e) the applicant has complied substantially with:
 - (i) the conditions that apply or applied to:
 - (A) the last of any entry permits held by the applicant (other than a condition of which the applicant was in breach solely because of the expiry of the entry permit); and
 - (B) any subsequent bridging visa; or
 - (ii) the conditions that apply or applied to:
 - (A) the last of any substantive visas held by the applicant (other than a condition of which the applicant was in breach solely because the visa ceased to be in effect); and
 - (B) any subsequent bridging visa; and
- (f) either:
 - (i) in the case of an applicant referred to in paragraph (a) — the applicant would have been entitled to be granted a visa of the class applied for if the applicant had applied for the visa on the day when the applicant last held a substantive or criminal justice visa; or
 - (ii) in the case of an applicant referred to in paragraph (b) — the applicant would have satisfied the criteria (other than any Schedule 3 criteria) for the grant of a visa of the class applied for on the day when the applicant last entered Australia unlawfully; and
- (g) the applicant intends to comply with any conditions subject to which the visa is granted; and
- (h) if the last visa (if any) held by the applicant was a transitional (temporary) visa, that visa was not subject to a condition that the holder would not, after entering Australia, be entitled to be granted an entry permit, or a further entry permit, while the holder remained in Australia.